

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOHN DOE,

Plaintiff,

-against-

TRUSTEES OF BOSTON COLLEGE,

Defendants.

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PLAINTIFF’S MOTION TO FILE ALL CASE DOCUMENTS UNDER SEAL

Pursuant to Local Rule 7.2, Plaintiff John Doe (“Plaintiff” or “Doe”) hereby respectfully moves this Court for leave to file all documents in the case under a temporary seal. As detailed below, Plaintiff seeks to seal this case until a decision on the pending Motion for Temporary Restraining Order and Preliminary Injunction and a decision on the merits of the underlying Complaint are issued because the case contains confidential and intimately private information about parties and non-parties, concerns the subject matter of educational records that are protected against disclosure by the Family Educational Rights and Privacy Act (“FERPA”), and includes specific and unique damages, particularly, Plaintiff Doe’s career prospects, that render Plaintiff Doe easily identifiable.¹

¹ Plaintiff John Doe filed his Complaint and Motion for Temporary Restraining Order and Preliminary Injunction simultaneously on July 29, 2019.

BACKGROUND

This action arises from the procedures employed and actions taken by Defendants, the Trustees of Boston College (the “Trustees” or “BC”), and their employees and/or agents against Plaintiff, a male student and [REDACTED] at BC, as a result of false allegations of sexual assault. BC investigated the false claims of sexual assault in an incomplete manner, exhibited a bias against Doe as the male accused, and deprived Doe of his fundamental rights to a fair proceeding including proper notice of the charges, the opportunity to present his case to an impartial hearing panel, and the ability to cross-examine his accuser, notwithstanding that the ultimate decision came down to a determination of which party’s account the investigators found more credible. As a result of Defendants’ discriminatory and unlawful conduct, BC suspended Plaintiff for one academic year, resulting in a permanent notation on his academic record, a delayed graduation date, the loss of his [REDACTED] [REDACTED], and the resulting loss of anticipated career opportunities and prospective earnings.

Due to the invasive personal nature of the false allegations, the inevitable inclusion of educational records that are protected against disclosure by FERPA, and the specific nature of damages, particularly the impact it may have on Plaintiff’s [REDACTED] [REDACTED] in [REDACTED], and [REDACTED] [REDACTED] [REDACTED], that make Plaintiff Doe easily identifiable, Plaintiff now moves to file under a temporary seal until a ruling on his Motion for a Temporary Restraining Order and Preliminary Injunction is issued.

ARGUMENT

I. The Case Documents Should be Filed Under Seal Because They Contain Intimate Personal and Confidential Information About Plaintiff and Non-Parties.

Pursuant to Local Rule 7.2, confidential information or materials submitted with court filings may be sealed or otherwise restricted from public access upon a showing of good cause. Good cause exists in this matter because the case documents reveal highly confidential, personal, and sensitive information about Plaintiff, Jane Roe, and other witnesses BC interviewed during or otherwise involved with the investigation.

This matter places the content of the investigation at issue, specifically, the erroneous allegations of sexual misconduct made by Jane Roe. The privacy interests of all parties, Jane Roe, and other third-party witnesses are all aligned because the documents describe and assess Jane Roe's allegations against Plaintiff and contain personal and private information about all involved, including intimate details about sexual interactions, locations, and events. *See United States v. Miami Univ.*, 294 F.3d 797, 818 (6th Cir. 2002) (noting that release of disciplinary records "clearly will injure the reputations of the students involved, including the perpetrator, the victim and any witnesses"). Subsequent documentation filed will continue to become more specific in nature. BC's policy allows for confidentiality in the investigation and reporting of sexual harassment and assault.²

Jane Roe, the individual that accused Plaintiff of sexual misconduct, is also of concern in this pending litigation. Disclosure of Jane Roe's name is unnecessary and unwarranted. *See Miami Univ.*, 294 F.3d at 818 (detailing that release of disciplinary records "clearly will injure the reputations of the students involved, including the perpetrator, victim and any witnesses").

² In order protect the privacy interests of himself, Jane Roe, and other involved third parties and in addition to this present motion, Plaintiff Doe filed a motion to proceed pseudonymously.

Furthermore, revealing personally identifiable information about any of the involved parties and non-parties may have a chilling effect on participation of students and other witnesses in the Title IX investigatory process at BC. *See DeCosta v. Chabot*, 1994 WL 279739 at *2 (D.N.H. June 9, 1994) (granting motion to seal abuse investigation records as supporting exhibits to a dispositive motion, in part to “encourage reports and to protect the reporters”).

For all of these reasons, Plaintiff Doe requests that this Court allow him to proceed under a temporary seal until the Motion for Temporary Restraining Order and Preliminary Injunction and the underlying Complaint are decided on the merits, to protect the identity of Plaintiff, Jane Roe, and other non-party witnesses. *See In Re Boston Herald*, 321 F.3d 174, 190-91 (1st Cir. 2003) (affirming the trial court’s sound discretion to preserve documents under seal where the privacy interests outweigh the general public interest in access to judicial records, and noting that the Court should give increased weight to the privacy interest of third parties).

II. All Case Documents Should Be Redacted and Filed Under Seal Because They Will Include Records Protected Against Disclosure Under FERPA.

As an independent basis to file all documents under seal to protect the identities of BC students, 34 C.F.R. §§ 99.10, 99.30 (“FERPA”) prohibits BC from producing to third parties any “personally identifiable information” contained in “education records” of Plaintiff or other BC students, except in limited circumstances. “Personally identifiable information” includes a student’s name as well as any indirect identifiers “that, alone or in combination, [are] linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” 34 C.F.R. § 99.3. “Education records” are records directly related to a student and maintained by an educational institution, including disciplinary records. The documents in the pending litigation will include the discussion of disciplinary records, which

contain names of non-party BC students as well as other information sufficient to aid in identifying non-party BC students. These student names and identities are confidential as a matter of law.

Generally, FERPA protects a student's personally identifiable information contained in his or her education records, absent the student's consent, from public disclosure. FERPA regulations also make clear that witnesses and respondents in school disciplinary proceedings have a privacy interest in the records of the proceedings. 34 C.F.R. § 99.31(a)(14) provides:

(i) The institution must not disclose the final results of the disciplinary proceeding unless it determines that –

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegations made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without prior written consent of the student.

The nature of the documents essential to this pending litigation requires that all documents in the case be sealed from public view in their entirety. Redaction of names would not be enough to maintain compliance with FERPA's regulations because FERPA protects not only personally identifying information, but also personally *identifiable* information. The Complaint and Motion for a Temporary Restraining Order and Preliminary Injunction all reference the disciplinary proceedings and resulting documentation because they are the subject matter of this litigation. Additionally, BC will likely seek to admit these documents in accordance with its right to defend itself, per 34 C.F.R. § 99.31(a)(9)(iii)(B). This makes admittance of the documents that contain information protected by FERPA inevitable. As such, consistent with FERPA, all documents filed in this case should be filed under seal.

III. The Case Documents Should Be Filed Under Seal Because the Unique and Specific Nature of the Damages, Particularly Plaintiff Doe's [REDACTED], Render the Plaintiff Easily Identifiable.

Good cause is further demonstrated because the unique and specific nature of the damages render the Plaintiff easily identifiable; specifically, Plaintiff Doe's [REDACTED] [REDACTED] [REDACTED] and his future as a [REDACTED].

The potential damages that could result for Plaintiff Doe are so specific in nature that it would be easy to draw conclusions as to the identity of Plaintiff Doe. These events and potential damages are discussed at length in John Doe's Declaration in Support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.³ The Declaration and Complaint detail Plaintiff Doe's future career prospects as a [REDACTED]; namely, that Doe is a [REDACTED] [REDACTED].⁴ Plaintiff Doe's purpose in bringing this case forward is to expunge his disciplinary record, vacate Boston College's erroneous finding, and recover for the damages he has sustained and will continue to sustain if the suspension is not stayed. Allowing the case documents to be filed unsealed, and freely accessible to the public, would frustrate the purpose of this litigation. It is imperative that this information remain under seal because of the potential harm that could result to Plaintiff Doe.

For all of these reasons, Plaintiff Doe requests that this Court allow him to protect his identity by requiring all documents in the case to be filed under seal.

³ Plaintiff John Doe filed his Complaint, and Declaration in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction on July 29, 2019.

⁴ Plaintiff refers the Court to John Doe's Declaration in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction filed on July 29, 2019 for a more detailed discussion concerning the specific damages and injuries he will suffer with respect to his [REDACTED], if the requested relief is not granted.

CONCLUSION

WHEREFORE, Plaintiff Doe has shown the requisite good cause required by Local Rule 7.2, and respectfully requests that the Court grant him leave to file all case documents under temporary seal, until a ruling on Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction and a decision on the merits of the underlying complaint are issued.

Dated: July 29, 2019

Respectfully submitted,

NESENOFF & MILTENBERG LLP
Attorneys for Plaintiff John Doe

/s/ Tara J. Davis

Andrew T. Miltenberg, Esq. (*pro hac vice*
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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Plaintiff, through his undersigned counsel, was not able to confer with opposing counsel concerning his request for the filing of this matter under seal, as this motion is being filed *ex parte*, contemporaneous with the filing of Plaintiff's complaint and emergency motion for injunctive relief. As such, Plaintiff is not yet aware of who will be serving as defense counsel.

/s/ Tara J. Davis

Tara J. Davis, Esq. (BBO No. 675346)